

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

WILLIS FLOYD WILEY,  
TDCJ-CID NO.753383,

Plaintiff,

VS.

BRAD LIVINGSTON,

Defendant.

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CIVIL ACTION NO. H-07-2438

OPINION ON DISMISSAL

Plaintiff, a state inmate incarcerated in the Texas Department of Criminal Justice—Correctional Institutions Division, has filed a civil rights complaint, seeking a preliminary injunction and a temporary restraining order. (Docket Entry No.1). Plaintiff has not filed the \$350.00 filing fee; therefore, the Court presumes that plaintiff seeks to proceed *in forma pauperis*. A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate's privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Plaintiff's complaint does not indicate that he is any danger.

Plaintiff's litigation history reveals that he falls within the provisions of section 1915(g). Plaintiff has filed at least three other lawsuits in federal courts while incarcerated in prison or a detention facility. All three have been dismissed as either frivolous, malicious, or for failure to state a claim upon which relief may be granted.<sup>1</sup>

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g). Any pending motions are further DENIED.

The Clerk will provide a copy of this order to the plaintiff and a copy by facsimile transmission, regular mail, or e-mail to the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159, and the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED at Houston, Texas, this 27th day of August, 2007.

  
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Melinda Harmon  
United States District Judge

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<sup>1</sup> See *Wiley v. Murphy*, Civil Action No.4:98cv4340 (S.D. Tex. Jun. 30, 1999) (frivolous); *Wiley v. Dretke*, Civil Action No.4:05cv3430 (S.D. Tex. Oct. 26, 2005) (duplicative); *Wiley v. McKellar*, Civil Action No.6:04cv331 (E.D. Tex. Feb. 1, 2005), *aff'd as modified* No.05-40235 (5th Cir. 2006).